



**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

September 23, 2020

Mr. Joseph B. Maher
Principal Deputy General Counsel and Senior Official
Performing the Duties of the Under Secretary for Intelligence and Analysis
Office of Intelligence and Analysis
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Maher:

Contrary to your statutory obligation as the head of an element of the U.S. Intelligence Community, you have failed to keep the House Permanent Select Committee on Intelligence (“Committee”) fully and currently informed of intelligence activities undertaken by the Department of Homeland Security’s (“DHS” or “Department”) Office of Intelligence and Analysis (“I&A”) and you have failed to furnish to the Committee, pursuant to its requests, responsive information and material concerning such activities.¹

I&A continues to withhold numerous documents and communications within the possession, custody, or control of the Department or I&A that refer or relate to the factual allegations advanced in the whistleblower reprisal complaint filed by your predecessor, Brian Murphy. These include, among others, records relating to the Department and I&A’s involvement in suppressing, manipulating, or otherwise interfering in intelligence reporting, analysis, and dissemination regarding Russian efforts to influence and interfere in the 2020 U.S. elections. I&A also continues to withhold responsive records related to I&A’s activities in Portland and in support of DHS’ response to nationwide protests.²

¹ 50 U.S.C. § 3092 (“[T]he heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, [...] and (2) furnish the congressional intelligence committees any information or material concerning intelligence activities (including the legal basis under which the intelligence activity is being or was conducted), [...] which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.”).

² Letter from Chairman Adam B. Schiff to Mr. Joseph B. Maher, Principal Deputy General Counsel and Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, U.S. Department of Homeland Security, September 18, 2020, *available at* https://intelligence.house.gov/uploadedfiles/20200918_hpsci_letter_to_dhs_ia_re_investigation_and_documents.pdf.

For instance, the Committee requires immediate access to all intelligence reports that I&A has recalled or revised in relation to the Department’s activities related to protests in Portland or elsewhere. According to recent public reports,

The Department's decision, moreover, to impose arbitrary and unnecessary requirements on Mr. Murphy and his attorneys prior to authorizing temporary security clearances for Mr. Murphy's attorneys has obstructed the Committee's ability to hear comprehensive testimony, particularly of a classified nature, from a whistleblower alleging wrongdoing by the most senior officials at the Department. Due to the Department's delay, the Committee had to reschedule Mr. Murphy's deposition from Monday, September 21 to Friday, September 25.

Although the Department informed Mr. Murphy's attorneys yesterday that it "plans to process" their request for temporary security clearances at the appropriate level and that the Department "does not oppose Mr. Murphy appearing before" the Committee, the Department has made such authorization contingent on an unspecified "investigation" of unknown scope and duration, which the Department indicated today is "not yet complete"—even though the Committee's rescheduled deposition of Mr. Murphy is on Friday, September 25.³ The Department also continues to refuse to allow Mr. Murphy and his attorneys to review any classified documents in preparation for the deposition. DHS's refusal to make these documents available, and its insistence on imposing spurious bureaucratic hurdles prior to granting attorney clearances in time for the deposition, deprives Mr. Murphy of his ability to be represented by counsel and is a transparent effort to delay the deposition, obstruct the Committee's investigation, and bury the truth.

Relatedly, the Department's claim that Mr. Murphy does not have the required "need to know" the classified information he wishes to review is baseless.⁴ The classified information in question is central to his allegations as a whistleblower and his testimony before the Committee, and therefore relate to information and documents that Mr. Murphy previously accessed, reviewed, or approved as the former Acting Under Secretary of I&A.

a recent review by I&A found that approximately 20 DHS open source intelligence reports were recalled in the aftermath of revelations this summer that the Department had potentially collected and disseminated intelligence on U.S. journalists. Geneva Sands, *Around 20 DHS intelligence reports recalled in the wake of Portland controversy*, CNN, September 22, 2020, available at <https://www.cnn.com/2020/09/22/politics/dhs-intelligence-reports-recalled/index.html>. At most, I&A has produced only a small subset of those documents to the Committee, and, even then, only on an *in camera* basis.

³ Letter from Chad R. Mizelle, Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security, to Mark S. Zaid, counsel for Brian Murphy, September 22, 2020. *See also* Letter from Chad R. Mizelle, Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security, to Mark S. Zaid, counsel for Brian Murphy, September 23, 2020 ("At this time, your background investigation is not yet complete. Accordingly, until the process is complete, the Department will not grant your request for one-time access to information classified at the TS/SCI level.").

⁴ Letter from Chad R. Mizelle, Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security, to Mark S. Zaid, counsel for Brian Murphy, September 22, 2020 ("First, regarding your request for Mr. Murphy to have access to classified information, I would refer you to my September 17, 2020 letter. In Mr. Murphy's current position at the Department, he does not have the required 'need to know' the classified information he wishes to review. To be clear, DHS does not oppose Mr. Murphy appearing before the House Permanent Select Committee on Intelligence (HPSCI) to share any properly disclosable information that formed the basis of his complaint. However, it is not necessary for him to have special access to classified documents for that purpose.").

Additionally, the Department continues to insist on limiting and circumscribing which officials the Committee should hear from. As a result, the Committee sent letters on September 18 directly to nine officials requesting their testimony before the Committee. The Committee expects them to appear on the specified dates for their transcribed interviews.

As I stressed in my September 18, 2020 letter to you, the Committee has a responsibility to independently investigate and substantiate allegations of such a serious nature, and your office has an obligation to comply. Your decision to withhold all relevant records related to this investigation and circumscribe testimony obstructs the Committee's ability to carry out its constitutional oversight and legislative function.

Absent your cooperation, including authorization of appropriate security clearances for Mr. Murphy's attorneys in time for his deposition on Friday, September 25, please be advised that the Committee is prepared to resort to compulsory process to compel (1) I&A's production of responsive records that remain concealed from the Committee and (2) your appearance next week at an open hearing of the Committee, during which you will be expected to explain why the Department is preventing a whistleblower from providing classified testimony by stonewalling authorization of clearances to his personal attorneys and your own knowledge and involvement in matters under investigation.

During our September 9, 2020, meeting, you pledged that I&A would cooperate with the Committee's broadened investigation, and I sincerely hope that you will fulfill your legal obligation by cooperating in full with the Committee's oversight and investigative requests.⁵

Sincerely,



Adam B. Schiff
Chairman

CC Mr. Chad Mizelle, Senior Official Performing the Duties of the General Counsel

The Honorable Devin Nunes, Ranking Member

⁵ Letter from Chairman Adam B. Schiff to Mr. Joseph B. Maher, Principal Deputy General Counsel and Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, U.S. Department of Homeland Security, September 11, 2020, *available at* https://intelligence.house.gov/uploadedfiles/hpsci_letter_to_dhs_ia_acting_maher_re_investigation_scope.pdf.